

IT 02-8

Tax Type: Income Tax

Issue: Withholding Tax – Failure to File Return/Make Payment

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**ABC, INC.,
Taxpayer**

No. 02-IT-0000
FEIN 00-0000007
Period: 1/Q/97

Ted Sherrod

**Administrative Law
Judge**

RECOMMENDATION FOR DISPOSITION

Synopsis:

This matter is before this administrative tribunal as the result of a timely protest by ABC, Inc. (hereinafter referred to as “taxpayer”). The taxpayer protests the denial of the taxpayer’s claim for refund of overpayment of withholding tax for the first quarter of 1997 based upon the fact that the taxpayer’s IL-941-X, Amended Quarterly Illinois Withholding Tax Return, was filed outside of the statute of limitations filing period. In its protest, the taxpayer requested a formal hearing in this matter. However, prior to the convening of a hearing, the taxpayer withdrew its request for a hearing and requested that this case be decided based on the taxpayer’s protest. Therefore, this case is being decided

based on the information provided by the taxpayer in its protest. Following a review of the record in this case, I recommend that this matter be resolved in favor of the Department.

Findings of Fact:

1. The taxpayer timely filed its withholding tax return covering the first quarter of 1997. Taxpayer's Protest.
2. The withholding taxes included in the taxpayer's withholding tax return for the first quarter of 1997 exceeded its withholding taxes due for this tax period, and the taxpayer filed a refund claim on Form IL-941-X, Amended Quarterly Illinois Withholding Tax Return, seeking recovery of the tax overpayment; on November 29, 2001, the Department issued an LTR-102 Withholding Tax Amended Return Information (hereinafter "LTR-102 letter") in which the Department determined that it could not grant the taxpayer's refund claim because it was filed late. Department's LTR-102 letter; Taxpayer's Protest.
3. On December 5, 2001, the taxpayer filed a timely protest contesting the Department's disallowance of its refund claim and requesting a hearing. Taxpayer's Protest.
4. During pretrial proceedings, the taxpayer withdrew its request for a formal hearing in this matter and agreed to have this case decided based upon information provided by the taxpayer in its protest.

Conclusions of Law:

The Illinois Income Tax Act, 35 **ILCS** 5/201 *et seq.* (hereinafter referred to as the “Act”) provides for refunds of income tax overpayments. 35 **ILCS** 5/909. This grant of a right to a refund is not, however, without limitations. Specifically, the Act provides, in pertinent part:

§ 911. Limitations on Claims for Refund. (a) In general.

Except as otherwise provided in this Act:

(1) A claim for refund shall be filed not later than 3 years after the date the return was filed ... or one year after the date the tax was paid, whichever is the later;

35 **ILCS** 5/911(a)(1)

The Department determined that the taxpayer’s refund claim, consisting of its IL-941-X amended return, was not filed within 3 years after the taxpayer’s withholding tax return for the first quarter of 1997 was filed, or within 1 year after its withholding tax for the first quarter of 1997 was paid, as required by 35 **ILCS** 5/911. The Department’s determination, after reviewing the taxpayer’s amended return, is *prima facie* correct, and constitutes *prima facie* evidence of the correctness of the amount of tax due. 35 **ILCS** 5/904(a). Once the Department establishes its *prima facie* case, the burden shifts to the taxpayer to rebut it by producing competent evidence identified with the taxpayer’s books and records. Copilevitz v. Department of Revenue, 41 Ill. 2d 154 (1968); Central Furniture Mart v. Johnson, 157 Ill. App. 3d 907 (1st Dist. 1987); Vitale v. Department of Revenue, 118 Ill. App. 3d 210 (3rd Dist. 1983); A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3rd 826 (1st Dist. 1988).

The taxpayer supports its right to have its claim for refund addressed on its merits by arguing that failure to do so will result in a windfall to the state because the overpaid withholding taxes were remitted by mistake and were not legally due. Taxpayer’s

Protest. This argument, however, is not legally sufficient to avoid the effect of the statutory statute of limitations. 35 ILCS 5/911(a)(1) has been interpreted by the Illinois Appellate Court in the case of Dow Chemical Co. v. Department of Revenue, 224 Ill. App. 3rd 263 (1st Dist. 1991). In that case, the court found that “ ... although there is no limitation on the Department’s authority to make a refund or a credit ...” (*Id* at 267), the “taxpayer has an affirmative duty to file for a tax refund within a prescribed period of time”. *Id*. The court in Dow did not find any basis for equitable relief, as argued by the taxpayer, even in light of the fact that by invoking the statute of limitations, the Department received a windfall at the taxpayer’s expense. *Id* at 268-269.

The facts in this case support the same conclusion as in Dow, *supra*. Although the taxpayer asserts that it overpaid its withholding tax by mistake, the pertinent law supports the Department’s denial of the taxpayer’s refund claim as having been filed untimely.

The taxpayer also argues that the Department failed to notify it of its overpayment. The rights of taxpayers under Illinois tax law, including when the Department is obligated to notify the taxpayer in proceedings against it, are codified at 20 ILCS 2520/1 through 20 ILCS 2520/7. Nowhere in any of these provisions is the taxpayer afforded a right to be notified of an overpayment of Illinois taxes. Nor is any such notification mandated by the Act. While such notices may be given from time to time, they are not statutorily required. Hence, the Department’s failure to notify the taxpayer of its overpayment of tax is not a sufficient legal basis to allow the taxpayer’s refund claim.

ILCS 5/904(a), the Department's LTR-102 letter

due, which the taxpayer must rebut by producing competent evidence in order to prevail.

Copilevitz *supra*; _____, *supra* Vitale, ; A.R. Barnes & Co.
supra. Since the taxpayer's arguments present no basis for the relief the taxpayer is

facie case of the Department. Accordingly, I find that the Department's determination denying the taxpayer's refund claim must be affirmed.

for the reasons stated above, it is my recommendation that the Department's denial of the taxpayer's claim for refund be upheld.

Ted
Administrative Law Judge

Date: April 30, 2002